

Attachment A

Staff Analysis and Recommendation

County Planning, County Public Works, County Legal staff have reviewed the request for a variance from **Section 4.4 D, no single lot may be divided by a public road, alley or access easement.**

The applicant has requested this variance, see Request Letter included below this analysis.

Beet Dump Road has been in its current design for around 40 years. The road is maintained by the county and rerouting it at this time would be overly burdensome to the subdivider or new owners.

Here is an opinion from County Legal regarding the variance request.

A landowner wants to subdivide land with an existing road on the land. Generally, the road runs along the southern boundary of the land. The road serpentine up and down towards the eastern end of the land. Towards the eastern end of the land, some of the land is north of the road and some of the land is south of the road. There is no viable way for the land south of the road to be made into their own lots. The land is too small. The proposed subdivision will have two lots with land on both sides of the road. This is a violation of the prohibition that no single lot may be divided by a public road, alley or access easement. Under the circumstances, it makes sense for the road to divide the lots. I believe we should acknowledge the lot formation violates a provision of the regulations, but under the circumstances, the landowner should be allowed to violate the provision because of the configuration of the land and the road. The County should provide the landowner with a variance from the provision.

Sincerely yours,

Mark English
Deputy Yellowstone County Attorney
August 23, 2021

Considering Beet Dump Road has been at its current configuration for quite some time staff believes this variance should be granted.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

This variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

Strict adherence to the letter of the regulation would have this developer, of 5 lots, relocate Beet Dump Road for no real apparent reason.

3. The variance will not result in an increase in taxpayer burden.

The variance request will not increase taxpayer burden.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

Granting the variance will have no effect on zoning. This property is outside of Yellowstone County zoning jurisdiction.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

There is no other alternative proposed other than the request for a variance from the strict enforcement of the regulations.

Variance request from applicant's agent

PLANNING DIVISION
2825 3RD AVENUE NORTH, 4TH FLOOR
BILLINGS, MONTANA 59101
Attn: Dave Green

RE: Request for variance

Per Dave Green, Planner II, of the City/County Planning Department and per the subdivision rules and regulations, "Subdivision regulations do not allow a road to split a lot, Section 4.4 D. No single lot may be divided by a public road, alley or access easement."

Our request, on behalf of the landowners, is to ask for a variance on this regulation for the following reasons:

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The road, Beet Dump Road, has been in existence for +/- 40 years and serves as access to surrounding properties as well as the proposed subdivision. There will be no detriment to the existing adjoining properties.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

It would be a significant hardship for the landowners to re-route and recreate a new road for such a small subdivision and for so few lots.

3. The variance will not result in an increase in taxpayer burden.

The road is already existing and should not create any increase in taxpayer burden. Also, the road is already maintained by Yellowstone County.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

The subdivision is outside of zoning regulations and the Growth Policy.

5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.

No alternative designs are requested.

Sincerely,

Lynn Essex
Essex Surveying LLC
406-670-7981